

TRUST DEED FORECLOSURE CHANGES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: LaVar Christensen

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill enacts a provision relating to the foreclosure of trust deeds.

Highlighted Provisions:

This bill:

- ▶ requires a beneficiary or servicer to appoint a single point of contact upon determining that a loan secured by a trust deed on owner-occupied residential property is in default;
- ▶ requires notice to a default trustor before a notice of default is filed;
- ▶ allows a default trustor to make application for foreclosure relief if the beneficiary or servicer offers foreclosure relief;
- ▶ establishes duties of the single point of contact during the three-month period following a notice of default; and
- ▶ makes provisions applicable if a default trustor applies for foreclosure relief.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-1-24.3, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

30 Section 1. Section **57-1-24.3** is enacted to read:

31 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

32 (1) As used in this section:

33 (a) "Default trustor" means a trustor under a trust deed that secures a loan that the
34 beneficiary or servicer claims is in default.

35 (b) "Foreclosure relief" means a mortgage modification program or other foreclosure
36 relief option offered by a beneficiary or servicer.

37 (c) "Loan" means an obligation incurred for personal, family, or household purposes,
38 evidenced by a promissory note or other credit agreement for which a trust deed encumbering
39 owner-occupied residential property is given as security.

40 (d) "Owner-occupied residential property" means real property that is occupied by its
41 owner as the owner's primary residence.

42 (e) "Servicer" means an entity, retained by the beneficiary:

43 (i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant
44 to the terms of a loan; or

45 (ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to
46 residential mortgage loans.

47 (f) "Single point of contact" means a person who, as the designated representative of
48 the beneficiary or servicer, is authorized to:

49 (i) coordinate and ensure effective communication with a default trustor concerning:

50 (A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust
51 property; and

52 (B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

53 (ii) direct all foreclosure proceedings initiated by the beneficiary or servicer relating to
54 the trust property, including:

55 (A) the filing of a notice of default under Section 57-1-24 and any cancellation of a
56 notice of default;

57 (B) the publication of a notice of trustee's sale under Section 57-1-25; and

58 (C) the postponement of a trustee's sale under Section 57-1-27 or this section.
59 (2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary
60 or servicer shall:
61 (i) designate a single point of contact; and
62 (ii) send notice by United States mail to the default trustor.
63 (b) A notice under Subsection (2)(a)(ii) shall:
64 (i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of
65 default;
66 (ii) state:
67 (A) the nature of the default;
68 (B) the total amount the default trustor is required to pay in order to cure the default
69 and avoid the filing of a notice of default, itemized by the type and amount of each component
70 part of the total cure amount; and
71 (C) the date by which the default trustor is required to pay the amount to cure the
72 default and avoid the filing of a notice of default;
73 (iii) disclose the name, telephone number, email address, and mailing address of the
74 single point of contact designated by the beneficiary or servicer; and
75 (iv) direct the default trustor to contact the single point of contact regarding foreclosure
76 relief available through the beneficiary or servicer for which a default trustor may apply, if the
77 beneficiary or servicer offers foreclosure relief.
78 (3) Before the expiration of the three-month period described in Subsection 57-1-24(2),
79 a default trustor may apply directly with the single point of contact for any available
80 foreclosure relief.
81 (4) A default trustor shall, within the time required by the beneficiary or servicer,
82 provide all financial and other information requested by the single point of contact to enable
83 the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure
84 relief for which the default trustor applies.
85 (5) The single point of contact shall:

86 (a) inform the default trustor about and make available to the default trust any available
87 foreclosure relief;

88 (b) undertake reasonable and good faith efforts, consistent with applicable law, to
89 consider the default trustor for foreclosure relief for which the default trustor is eligible;

90 (c) ensure timely and appropriate communication with the default trustor concerning
91 foreclosure relief for which the default trustor applies; and

92 (d) notify the default trustor by United States mail of the decision of the beneficiary or
93 servicer regarding the foreclosure relief for which the default trustor applies.

94 (6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to
95 the trust property of a default trustor who has applied for foreclosure relief until after the single
96 point of contact provides the notice required by Subsection (5)(d).

97 (7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with
98 respect to the trust property of a default trustor who has applied for foreclosure relief if, in the
99 exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

100 (a) determines that the default trustor does not qualify for the foreclosure relief for
101 which the default trustor has applied; or

102 (b) elects not to enter into a written agreement with the default trustor to implement the
103 foreclosure relief.

104 (8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in
105 order to allow further time for negotiations relating to foreclosure relief.

106 (b) A postponement of a trustee's sale under Subsection (8)(a) does not require the
107 trustee to file for record a new or additional notice of default under Section 57-1-24.

108 (9) A beneficiary or servicer shall cause the cancellation of a notice of default filed
109 under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

110 (a) determines that the default trustor qualifies for the foreclosure relief for which the
111 default trustor has applied; and

112 (b) enters into a written agreement with the default trustor to implement the foreclosure
113 relief.

114 (10) This section may not be construed to require a beneficiary or servicer to:
115 (a) establish foreclosure relief; or
116 (b) approve an application for foreclosure relief submitted by a default trustor.
117 (11) A beneficiary and servicer shall each take reasonable measures to ensure that their
118 respective practices in the foreclosure of owner-occupied residential property and any
119 foreclosure relief with respect to a loan:
120 (a) comply with all applicable federal and state fair lending statutes; and
121 (b) ensure appropriate treatment of default trustors in the foreclosure process.
122 (12) This section does not apply if the beneficiary under a trust deed securing a loan is
123 an individual.
124 (13) A beneficiary or servicer is considered to have complied with the requirements of
125 this section if the beneficiary or servicer designates and uses a single point of contact in
126 compliance with federal law, rules, regulations, guidance, or guidelines governing the
127 beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal
128 Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of
129 the Currency, the National Credit Union Administration, or the Consumer Financial Protection
130 Bureau.
131 (14) The failure of a beneficiary or servicer to comply with a requirement of this
132 section does not affect the validity of a trustee's sale of the trust property to a bona fide
133 purchaser.